

State of South Dakota

EIGHTY-FIFTH SESSION LEGISLATIVE ASSEMBLY, 2010

637R0470

HOUSE ENGROSSED NO. **HB 1136** - 2/22/2010

Introduced by: Representatives Hunt, Bolin, Brunner, Greenfield, Jensen, Juhnke, Novstrup (David), Olson (Betty), Peters, and Steele and Senators Rhoden, Abdallah, Fryslie, Gant, Hansen (Tom), and Novstrup (Al)

1 FOR AN ACT ENTITLED, An Act to limit asbestos-related liabilities for certain successor
2 corporations.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in this Act mean:

- 7 (1) "Corporation," any corporation for profit, including a domestic corporation organized
8 under the laws of this state or a foreign corporation organized under laws other than
9 the laws of this state;
- 10 (2) "Successor," any corporation that assumes or incurs or has assumed or incurred
11 successor asbestos-related liabilities and that became a successor before January 1,
12 1972, or any successors of that corporation;
- 13 (3) "Transferor," any corporation from which successor asbestos-related liabilities are
14 or were assumed or incurred.



Section 2. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, an asbestos claim is any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

- (1) The health effects of exposure to asbestos, including a claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance;
- (2) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and
- (3) Any claim for damage or loss caused by the installation, presence, or removal of asbestos.

Section 3. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, successor asbestos-related liabilities are any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due to become due, which are related to asbestos claims and were assumed or incurred by a corporation as a result of, or in connection with, a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined, pursuant to section 6 of this Act, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged,

1 by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a
2 transferor, in connection with settlements, judgments, or other discharges in this state or another
3 jurisdiction.

4 Section 4. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The cumulative successor asbestos-related liabilities of any successor corporation are limited
7 to the fair market value of the total gross assets of the transferor determined as of the time of
8 the merger or consolidation. The successor corporation does not have responsibility for
9 successor asbestos-related liabilities in excess of this limitation.

10 Section 5. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If the transferor had assumed or incurred successor asbestos-related liabilities or liabilities
13 in connection with a prior merger or consolidation with a prior transferor, then the fair market
14 value of the total assets of the prior transferor determined as of the time of the earlier merger
15 or consolidation shall be substituted for the limitation set forth in section 4 of this Act for
16 purposes of determining the limitation of liability of a successor corporation.

17 Section 6. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 Any successor corporation may establish the fair market value of total gross assets for the
20 purpose of the limitations under sections 4 and 5 of this Act through any method reasonable
21 under the circumstances, including:

22 (1) By reference to the going concern value of the assets or to the purchase price
23 attributable to, or paid for, the assets in arms-length transactions; or

24 (2) In the absence of other readily available information from which the fair market value

1 can be determined, by reference to the value of the assets recorded on a balance sheet.

2 Total gross assets include intangible assets. To the extent total gross assets include any
3 liability insurance that was issued to the transferor whose assets are being valued for purposes
4 of this section, the applicability, terms, conditions, and limits of such insurance are not affected
5 by this section, nor does this section otherwise affect the rights and obligations of an insurer,
6 transferor, or successor under any insurance contract or any related agreements, including pre-
7 enactment settlements resolving coverage-related disputes, and the rights of an insurer to seek
8 payment for applicable deductibles, retrospective premiums, or self-insured retentions or to seek
9 contribution from a successor for uninsured or self-insured periods or periods where insurance
10 is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total
11 gross assets include any such liability insurance, a settlement of a dispute concerning any such
12 liability insurance coverage entered into by a transferor successor with the insurers of the
13 transferor before the date of enactment of this Act shall be determinative of the total coverage
14 of such liability insurance to be included in the calculation of the transferor's total gross assets.

15 Section 7. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 The fair market value of total gross assets at the time of the merger or consolidation shall
18 increase annually at a rate equal to the sum of the prime rate as listed in the first edition of the
19 *Wall Street Journal* published for each calendar year since the merger or consolidation, unless
20 the prime rate is not published in that edition of the *Wall Street Journal*, in which case any
21 reasonable determination of the prime rate on the first day of the year may be used, plus one
22 percent. This rate may not be compounded. The adjustment of the fair market value of total
23 gross assets shall continue as provided in this section until the date the adjusted value is first
24 exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed

1 to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a
2 transferor after the time of the merger or consolidation for which the fair market value of total
3 gross assets is determined.

4 No adjustment of the fair market value of total gross assets may be applied to any liability
5 insurance that may be included in the definition of total gross assets by section 6 of this Act.

6 Section 8. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The provisions of sections 4 and 5 of this Act do not apply to any of the following:

- 9 (1) Workers' compensation benefits paid by or on behalf of an employer to an employee
10 under the provisions of Title 62, or a comparable workers' compensation law of
11 another jurisdiction;
- 12 (2) Any claim against a corporation that does not constitute a successor asbestos-related
13 liability;
- 14 (3) Any obligation under the National Labor Relations Act, 29 U.S.C. section 151, et
15 seq., or under any collective bargaining agreement; or
- 16 (4) A successor that, after a merger or consolidation, continued in the business of mining
17 asbestos or in the business of selling or distributing asbestos fibers or in the business
18 of manufacturing, distributing, removing, or installing asbestos-containing products
19 which were the same or substantially the same as those products previously
20 manufactured, distributed, removed, or installed by the transferor.